STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
William B. Murphy, Patrick M. Meter and Deborah A. Servitto

On appeal from the Michigan Tax Tribunal
Tribunal Judge Steven H. Lasher

SBC HEALTH MIDWEST, INC,

Petitioner-Appellee,

v

CITY OF KENTWOOD,

Respondent-Appellant.
_____/

Supreme Court No. 151524

Court of Appeals No. 319428

Michigan Tax Tribunal No. 416230

APPELLANT CITY OF KENTWOOD'S BRIEF ON APPEAL

*** ORAL ARGUMENT REQUESTED ***

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Dated: February 17, 2016

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STATEMENT OF JURISDICTION

On March 19, 2015, the Court of Appeals issued an unpublished opinion in *SBC Health Midwest, Inc v City of Kentwood*, Docket No. 319428. (App. 463a). On April 30, 2015, Respondent-Appellant City of Kentwood ("City") timely filed an Application for Leave to Appeal with this Court. (App. 467a). Petitioner-Appellee filed a brief in opposition to the Application on May 22, 2015 (App. 591a) and Respondent-Appellant filed a reply brief (App. 743a). This Court granted the City's Application in an order dated December 23, 2015. (App. 758a). The Court has jurisdiction over the appeal under MCR 7.301(A)(2).

STATEMENT OF QUESTION PRESENTED

In the order granting the City's Application for Leave to Appeal, the Court ordered the parties to address:

> WHETHER THE TAX EXEMPTIONS SET FORTH UNDER MCL 211.9(1)(a) ARE AVAILABLE TO A FOR-PROFIT EDUCATIONAL INSTITUTION.

The City of Kentwood's answer:	No.
The Tax Tribunal's answer:	No.
Petitioner's answer:	Yes.
The Court of Appeals' answer:	Yes.

INTRODUCTION

Under the General Property Tax Act ("GPTA"), MCL 211.1 *et seq.*, "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. Recognizing that taxation is the rule and exemption is the exception, this Court has repeatedly stated that exemption statutes are to be narrowly construed in favor of the taxing authority.

This appeal stems from Petitioner's request to have its personal property exempted from ad valorem property taxes because of its claimed status as an educational institution. Construing the exemption provisions in MCL 211.9(1)(a) [1] and MCL 211.7n[2] in favor of the City, the Tax Tribunal held that the personal property tax exemption was not available to a for-profit entity and, thus, Petitioner could not claim an exemption for the property used in operating a for-profit college. On appeal, the Court of Appeals reversed, holding that despite the "nonprofit" language in MCL 211.7n, and the fact that Petitioner would not qualify for a real or personal property tax exemption under that section, Petitioner could nevertheless claim an exemption under MCL 211.9(1)(a) because that section, read alone, does not require "nonprofit" status. (App. 463a.)

The Court of Appeals decision conflicts with the Constitution and with *Wexford Medical Group v City of Cadillac*, in which this Court held that the "nonprofit" requirement in MCL 211.7o applies with equal force to an exemption under the "corollary statute" MCL 211.9(1)(a). The Court of Appeals erred in its treatment of MCL 211.9(1)(a), its failure to read MCL 211.9(1)(a) together with MCL 211.7n, and its failure to construe MCL 211.9(1)(a) in favor of the taxing jurisdiction. The decision creates a loophole that threatens tax revenues throughout the state and must be closed.

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[1] MCL 211.9(1)(a), formerly MCL 211.9(a), exempts, in part, "personal property of charitable, educational, and scientific institutions…."

[2] MCL 211.7n exempts, in part, certain "[r]eal estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions….with the buildings and other property thereon…."

STATEMENT OF FACTS

I. Petitioner's Exemption Claim

Petitioner is a Delaware for-profit corporation and a subsidiary of Career Education Corporation ("CEC"), a Delaware for-profit corporation. (Stipulation of Facts, App. 7a, ¶¶ 3-4). As of each of the relevant tax days[3], Petitioner operated Sanford-Brown College Grand Rapids ("SBC-GR") in the City. SBC-GR was a private, for-profit postsecondary school. (App. 7a, ¶¶ 7-8). SBC-GR began offering courses in November 2009. SBC-GR stopped enrolling new students in December 2012 after CEC announced plans to close the campus. SBC-GR closed its facility in early 2014. (App. 8a-9a, ¶¶ 17, 25.)

Petitioner requested a personal property tax exemption for its commercial personal property for tax years 2011 through 2013. The aggregate true cash value of the subject property for the three tax years at issue (2011 through 2013) was $1,757,000, which Petitioner did not dispute. (App. 7a, ¶¶ 3-4. The City denied the exemption and Petitioner appealed the denial to the Michigan Tax Tribunal ("Tribunal").

II. The Tax Tribunal's Decision

At the Tribunal, Petitioner claimed that the property was exempt under MCL 211.9(1)(a) as the property of an educational institution. The City opposed the exemption for the reason that the exemption did not apply to for-profit colleges. The City argued (as discussed *infra*) that Petitioner's interpretation of MCL 211.9(1)(a) conflicted not only with the remainder of the statutory scheme regarding exemptions for educational institutions, most notably MCL 211.7n (which provides an exemption for real or personal property owned by a *nonprofit* educational institution), but also with the Michigan Constitution, which authorizes a tax exemption for *nonprofit* educational

[3] The taxable status of the real and personal property (i.e., whether the property is exempt) is determined as of tax day, which is defined as December 31 of the prior year. MCL 211.2.

organizations…." The Tribunal agreed and held that Petitioner could not claim an exemption for the subject property.

The Tribunal explained that because MCL 211.9(1)(a) and MCL 211.7n share a common purpose (i.e., they relate to an exemption for personal property of an educational institution), they must be read together *in pari materia* to ascertain the legislative intent with respect to the exemption. (October 8, 2013 Final Opinion and Judgment, p 8-9, App. 218a-219a.) The Tribunal analyzed the statutes at issue and concluded that MCL 211.7n is controlling and that MCL 211.7n applies only to "*nonprofit* organizations and institutions." (*Id.* at p 11, App. 221a [emphasis in original]). The Tribunal also explained that the Michigan Constitution provides an exemption from taxation for personal property only for nonprofit educational organizations." *Id.* (emphasis in original). The Tribunal thus concluded:

> Given the above, the Tribunal finds that Petitioner's personal property is not entitled to an exemption under MCL 211.9(l)(a) and 211.7n, as Petitioner is not a *nonprofit* educational institution, as required by the controlling statute and the Michigan Constitution. The Tribunal does not find it necessary to consider the remaining arguments relating to whether Petitioner is an "educational" institution, as Petitioner's status as a for-profit entity would prohibit it from receiving the exemption regardless of whether it met the test for an educational institution. As such, the Tribunal finds that there is no genuine issue of material fact with respect to the requirement that Petitioner must be a nonprofit educational institution in order to qualify for an exemption. As Petitioner is not a nonprofit educational institution, summary disposition in favor of Respondent is appropriate under MCR 2.116(I)(2). [*Id.* at 11-12, App. 221a-222a (emphasis in original).]

Petitioner moved for reconsideration (App. 223a) and the Tribunal denied the motion because Petitioner "failed to demonstrate a palpable error relative to the October 8, 2013 Final Opinion and Judgment that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected." (November 15, 2013 Order Denying Petitioner's Motion for Reconsideration, App. 296a.) The Tribunal concluded that Petitioner, instead, "reiterated its original arguments raised in its Motion for Summary Disposition", and recognized that "a motion for

rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." *Id.* at 3 (App 298a), citing MCR 2.119(F)(3).

III. The Court of Appeals Decision

Petitioner appealed the Tribunal's decision to the Court of Appeals. (COA Briefs, App. 229a, 373a, 444a). On appeal, the Court of Appeals reversed the Tribunal's decision, concluding that MCL 211.9(1)(a) exempts from taxation the personal property of educational institutions without regard to whether the institution is for-profit or nonprofit. The Court of Appeals held that MCL 211.9(1)(a) is unambiguous and, therefore, the Tribunal erred in applying the nonprofit requirement in MCL 211.7n to MCL 211.9(1)(a). The Court reasoned:

> First, MCL 211.7n exempts from taxation real estate or personal property owned and occupied by a nonprofit theater, library, educational, or scientific institution. We note that MCL 211.7n employs the phrase "owned *and* occupied" addressing the property subject to taxation, and the tax exemption claimed in the instant matter concerns a personal property exemption. One does not ordinarily envision "personal property" of the sort being claimed exempt by petitioner here as being "occupied" or subject to occupation as referenced in MCL 211.7n, lending serious doubt to whether that statute would be at all applicable to the facts at hand.
>
> Next, "the interpretive aid of the doctrine of in pari materia can only be utilized in a situation where the section of the statute under examination is itself ambiguous." *Tyler v Livonia Pub Sch*, 459 Mich 382, 392; 590 NW2d 560 (1999), citing *Voorhies v Faust*, 220 Mich 155, 157; 189 NW 1006 (1922). As indicated above, MCL 211.9(1)(a) is unambiguous, rendering use of the doctrine of in *pari materia* concerning MCL 211.7n unnecessary. Thus, even if MCL 211.7n were applicable and required an educational institution to be nonprofit in order to qualify for the tax exemption contained therein, the most that can be said is that petitioner would not qualify for an exemption under MCL 211.7n. This does not result in petitioner being deprived of a tax exemption under MCL 211.9(1)(a) if it otherwise applies. [Court of Appeals Opinion, slip op at 3, App. 465a.]

The Court of Appeals remanded the case to the Tribunal to consider whether Petitioner—regardless of its for-profit status—meets the criteria for an education institution exemption under MCL 211.9(1)(a). The City's Application for Leave to Appeal was then granted. (App. 758a.)

ARGUMENT

I. Standard of Review

Summary disposition may be granted under MCR 2.116(C)(10) where there is no genuine issue of material fact and the moving party proves that it is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing a motion under MCR 2.116(C)(10), the Tribunal is required to construe the pleadings and other documentary evidence in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The Tribunal may (as it did in this case) grant summary disposition to the opposing party under MCR 2.116(I)(2) if it determines that the opposing party, rather than the moving party, is entitled to judgment. *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

When statutory interpretation is involved, this Court reviews de novo whether the Tribunal made an error of law or adopted a wrong principle. *Briggs Tax Svc, LLC v Detroit Public Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010). This Court also reviews de novo the grant or denial of a motion for summary disposition. *Id.* But, this Court "will generally defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer. *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 221; 713 NW2d 734 (2006) (citation omitted). See also *Younkin v Zimmer*, 497 Mich 7, 10; 857 NW2d 244 (2014) (an administrative agency's "interpretation is entitled to respectful consideration and, if persuasive, should not be overruled without cogent reasons"); *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002) ("While statutory interpretation is a question of law that is reviewed de novo, we generally defer to the Tax Tribunal's interpretations of the statutes it administers and enforces").

II. The Court of Appeals erred in concluding that a for-profit corporation operating a private, for-profit post-secondary school may claim a personal property exemption under MCL 211.9(1)(a), where the General Property Tax Act and the Michigan Constitution provide an exemption only for nonprofit educational institutions, and where this Court has held that other institutions seeking an exemption under MCL 211.9(1)(a) must be nonprofit.

A. Tax exemptions must be strictly construed in favor of the taxing jurisdiction.

At the outset, it is well established that tax exemption statutes are to be strictly construed in favor of the taxing unit and exemptions are not to be lightly given. *Evanston YMCA Camp v State Tax Comm'n,* 369 Mich 1, 7; 118 NW2d 818 (1962). Michigan applies this standard to exemption statutes recognizing that "[a] property tax exemption is in derogation of the principle that all property shall bear a proportionate share of the tax burden…." *Retirement Homes of the Detroit Annual Conf of the United Meth Church, Inc v Sylvan Twp,* 416 Mich 340, 348; 330 NW2d 682 (1982).

As the Court of Appeals explained in *EldenBrady v City of Albion,* 294 Mich App 251, 255; 816 NW2d 449 (2011), "[t]here are certain special rules of construction that apply to the interpretation of statutory tax exemptions:

> An intention on the part of the legislature to grant an exemption from the taxing power of the State will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all,

> and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant." [Quotations and citations omitted.]

The taxpayer has the burden of showing entitlement to the exemption. *Power v Dep't of Treasury,* 301 Mich App 226, 233; 835 NW2d 622 (2013).

Here, the Court of Appeals acknowledged that tax exemptions are to be strictly construed against the taxpayer and in favor of the taxing authority. Yet it is apparent that the Court of Appeals honored these special rules of statutory construction with lip service only. The Court of Appeals ignored the statutory scheme and the limitations set forth in the Michigan Constitution, and extended a category of personal property tax exemptions to for-profit entities that—but for the Court of Appeals reading of MCL 211.9(1)(a) in a vacuum—do not otherwise qualify for real or personal property tax exemptions.

B. Personal property owned by a for-profit educational institution is not exempt from ad valorem taxation.

All property, real and personal, is subject to taxation unless expressly exempted. MCL 211.1. MCL 211.9(1)(a) exempts the following personal property from ad valorem taxation:

> The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and nonprofit corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt.

The Court of Appeals simply held that MCL 211.9(1)(a) is unambiguous on its face and that Petitioner was entitled to an exemption under MCL 211.9(1)(a) "if it is an educational institution incorporated under the law of this state…." (App. 465a.)

Shockingly, the Court of Appeals interpretation ignores the fact that the language requiring incorporation in Michigan is unconstitutional. In fact, the unconstitutionality of that requirement has been recognized by the Court of Appeals for over 45 years. See e.g., *American Youth Foundation v Twp of Benona*, 37 Mich App 722, 724; 195 NW2d 304 (1972) (noting "the Supreme Court of the United States has held that denying tax-exempt status to an otherwise qualified institution because it is incorporated in another state violates the Fourteenth Amendment of the United States Constitution"), citing *WHYY v Glasboro*, 393 US 117; 89 S Ct 286; 21 L Ed 2d 242 (1968). See also *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 516; 465 NW2d 14 (1990) (instructing the Tribunal "not to consider the unconstitutional requirement that the institution be incorporated in this state"). This glaring error casts serious doubts on the soundness of the Court's interpretation of MCL 211.9(1)(a), as it demonstrates a fundamental lack of understanding regarding the administration of property tax laws in Michigan.

Similarly, for the reasons discussed below, the Court's conclusion that the exemption in MCL 211.9(1)(a) is available to a for-profit entity cannot withstand scrutiny and must be reversed. [4]

[4] The Tribunal did not reach the issue of whether Petitioner meets the requirements of an "educational institution." An institution seeking an educational institution exemption must (1) fit into the general scheme of education provided by the state and supported by public taxation; and (2) make a substantial contribution to the relief of the burden of government. *UAW-Ford National Ed Dev & Training Center v Detroit*, MTT No. 247572 (July 2, 2002). Further, before a specialized school of higher education is granted an exemption, it must satisfy the test set forth in *David Walcott Kendall Mem Sch v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968). In its order granting the Application, this Court instructed the parties to address whether the exemption in MCL 211.9(1)(a) is available to a for-profit educational institution. While the City answers that question in the negative, it does not intend to waive its argument that Petitioner cannot otherwise meet its burden of proving that it is an "educational institution."

1. The Court of Appeals interpretation of MCL 211.9(1)(a) directly conflicts with the Michigan Constitution.

Not only did the Court of Appeals ignore the unconstitutionality of the in-state incorporation requirement, the Court of Appeals also completely ignored Article 9, §4 of the 1963 Michigan Constitution, which clearly states that "[p]roperty owned and occupied by ***non-profit religious or educational organizations*** and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes" (emphasis added).

It is axiomatic that in the event of a conflict the requirements of the Constitution prevail over a statute:

> [I]t is "a fundamental axiom of American law, rooted in our history as a people and requiring no citations to authority, that the requirements of the Constitution prevail over a statute in the event of a conflict." See also *Marbury v Madison*, 5 US (1 Cranch) 137, 177, 2 L Ed 60 (1803) ("an act of the legislature, repugnant to the constitution, is void"). [*People v Meconi*, 277 Mich App 651, 658-659; 746 NW2d 881 (2008) (Sawyer, J., concurring).]

Thus, "[w]hen a statute is susceptible to two constructions, one consistent with the constitution and the other inconsistent, the one consistent with the constitution is preferred as that presumptively intended by the Legislature." *People v Gilliam*, 108 Mich App 695, 700; 310 NW2d 843 (1981), citing *People v Dubina*, 304 Mich 363, 369; 8 NW2d 99 (1943).

The Tribunal has correctly noted—not *only* in this case—that based on the language of Article 9, §4 of the 1963 Constitution, "the Tribunal cannot help but find that the will of the People was not to grant a property tax exemption to a for-profit organization." *Charter Dev Co, LLC v Twp of York*, MTT Docket No. 304877 (April 8, 2011), App. 570a.[5]

[5] It is also noteworthy that based on a survey conducted by the City Assessor's Office, which was presented below, the majority of taxing jurisdictions in which personal property of for-profit postsecondary education institutions was located concurred with the City and Tribunal's conclusion that the property was not exempt. This includes but is not limited to personal property owned by University of Phoenix, the Academy of Court Reporting, the Art Institute of

In fact, the Tribunal reaffirmed its interpretation of the statutes at issue in this case, holding once again that a for-profit educational institution is not entitled to an exemption under MCL 211.9(1)(a). In the case of *Grand Rapids Ed Center, Inc v Plainfield Twp,* MTT Docket No. 440053 (January 7, 2014), App. 585a. There, the Tribunal held that the operator of a for-profit, post-secondary school was not entitled to an exemption under MCL 211.9(1)(a) because the educational exemption is available to *nonprofit* organizations and institutions, as further dictated by the constitution. *Id.* at 4-5, App 587a-588a.

Because the Tribunal's interpretation is persuasive and is based on the well settled rules of statutory interpretation, it is entitled to deference by this Court. *Younkin, supra,* 497 Mich at 10; *Schultz, supra,* 252 Mich App at 529. Further, despite the Court of Appeals recognition that "the Legislature may ***not*** override a power provided in the Constitution," *Oshtemo Charter Twp v Kalamazoo Co Rd Comm'n,* 302 Mich App 574, 577; 841 NW2d 135 (2013) (emphasis added), the Court of Appeals in this case failed to even acknowledge that the Constitution limits exemptions to *nonprofit* educational institutions. Thus, the Court of Appeals did not present "cogent reasons" to overrule the Tribunal's interpretation and its decision should be reversed.

Michigan, DeVry University, Everest Institute, ITT Technical Institute, Michigan Institute of Aviation and Technology, Ross Medical Education Center, and Dorsey Schools. (App. 176a.) Thus, the Court of Appeals opinion conflicts with what appears to be the general understanding of the law in this state.

2. MCL 211.9(1)(a) cannot be read to grant an exemption to for-profit educational institutions because it would create a direct conflict with MCL 211.7n, which expressly provides an exemption for the personal property of a *nonprofit* educational institution; the only construction that avoids conflict is one in which MCL 211.9(1)(a) is read to apply only to nonprofit institutions as it was in *Wexford.*

The Court of Appeals conclusion that MCL 211.9(1)(a) applies with equal force to for-profit and nonprofit educational institutions also ignores the remainder of the statutory scheme regarding the exemption of property of educational institutions.

More specifically, the Court of Appeals interpretation of MCL 211.9(1)(a) creates a direct conflict with MCL 211.7n, which states:

> Real estate or personal property owned and occupied by ***nonprofit theater, library, educational, or scientific institutions*** incorporated under the laws of this state with the buildings ***and other property thereon*** while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act. [Emphasis added.]

MCL 211.9(1)(a) and MCL 211.7n share a common purpose, as both plainly address the exemption of the personal property of educational and other institutions. Because MCL 211.9(1)(a) and MCL 211.7n share a common purpose, the Court of Appeals clearly erred in concluding that they should not be read together.

Statutes that relate to the same subject matter are considered to be *in pari materia*. *People v Perryman*, 432 Mich 235, 240; 439 NW2d 243 (1989). "Statutes that address the same subject or share a common purpose are *in pari materia* and must be read together as a whole." *People v Harper*, 479 Mich 599, 621; 739 NW2d 523 (2007). The general rule of *pari materia* requires courts (and the Tribunal) to examine the context of related statutes. *Id.*

> Statutes *in pari materia* are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference on to the other. [*Detroit v Michigan Bell Tel Co*, 374 Mich 543, 558; 132 NW2d 660 (1965), overruled on other grounds by *City of Taylor v Detroit Edison Co*, 475 Mich 109, 120; 715 NW2d 28 (2006).]

The objective of the *in pari materia* rule is to give effect to the legislative purpose as found in statutes addressing a particular subject. *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 416; 590 NW2d 293 (1999).

There can be no doubt that MCL 211.9(1)(a) and MCL 211.7n address the same subject. See *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709, 712; 346 NW2d 862 (1984), in which the Court of Appeals recognized that personal property tax exemptions are provided for the same, *nonprofit* institutions in MCL 211.9(1)(a) and 211.7n:

> Petitioner argued to the Tax Tribunal that it was entitled to be exempt from personal property taxes under ***MCL 211.9(a), which protects nonprofit charitable, educational or scientific institutions. It should be noted that personal property tax exemptions are also provided for such institutions under MCL 211.7n and MCL 211.7o.*** Section 7n exempts personal property owned and occupied by a nonprofit theater, library, educational or scientific institution, while personal property owned and occupied by charitable institutions is exempt under section 7o. [Emphasis added.]

Similarly, in *American Youth Foundation, supra*, 37 Mich App at 725, the Court of Appeals concluded that in exempting "[t]he personal property of charitable, educational and scientific institutions" under MCL 211.9 "***the clear and express intention of the Legislature was to exempt Domestic, nonprofit corporations from taxation***" (emphasis added). In reaching this conclusion, the Court of Appeals examined MCL 211.9 along with an earlier version of MCL 211.7 that granted an exemption for "[s]uch real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans…." Importantly,

neither statute contained the word "nonprofit," but the Court concluded that the "clear and express intention of the Legislature" was to exempt nonprofit entities.

Despite this, the Court of Appeals in this case refused to apply the doctrine of *in pari materia*, finding instead that MCL 211.9(1)(a) was unambiguous on its face. Critically, the Court failed to recognize that even where a statute appears unambiguous on its face, application of the *in pari materia* rule is nevertheless appropriate to resolve a conflict. For example, in *Wayne Co Chief Executive v Mayor of City of Detroit*, 211 Mich App 243, 246-247; 535 NW2d 199 (1995), the Court of Appeals concluded that a statute was not ambiguous on its face, but nevertheless applied the doctrine of *pari materia* to determine if it irreconcilably conflicted with another statute. The Court concluded that "the trial court properly interpreted the statutes *in pari materia* to avoid a conflict." *Id*. at 247.

In fact, our appellate courts have repeatedly recognized that "[a] statutory provision is ambiguous if it irreconcilably conflicts with another provision or when it is equally susceptible to more than one meaning." *Basic Prop Ins Ass'n v Office of Fin & Ins Regulation*, 288 Mich App 552, 559; 808 NW2d 456 (2010). And where a statute irreconcilably conflicts with another or is equally susceptible to more than one meaning, judicial construction is appropriate, statutory provisions with a common purpose should be read *in pari materia*, and the construction that avoids conflict should control. *In re Indiana Michigan Power Co*, 297 Mich App 332, 344; 824 NW2d 246 (2012). See also *World Book*, *supra*, 459 Mich at 416-417 ("Conflicting provisions of a statute must be read together to produce an harmonious whole and to reconcile any inconsistencies whenever possible"); *People v Ellis*, 224 Mich App 752, 756; 569 NW2d 917 (1997) (when the construction of two statutes lends themselves to a construction that avoids conflict, that interpretation of the statutes is controlling).

Here, the only construction that avoids conflict between the statutes is one in which MCL 211.9(1)(a) is read to apply to *nonprofit* educational institutions. In fact, that is exactly what *Wexford, supra,* 474 Mich 192, requires. In *Wexford,* this Court held—despite the absence of the word "nonprofit" in MCL 211.9(1)(a)—that an exemption claimant seeking an exemption under MCL 211.7o *or its "corollary statute" MCL 211.9(1)(a)* must be a nonprofit institution. *Id.* at 215. Thus, for an exemption claimant to seek a charitable exemption under MCL 211.9(1)(a), the institution must be nonprofit. The result in this case should be the same.

Petitioner may attempt to argue that *Wexford* is distinguishable because a charitable institution—unlike an educational institution—*must* be nonprofit, or that notions of charity and nonprofit are inseparable. To the contrary, the *Wexford* Court recognized that a nonprofit institution is not automatically a charitable institution. "By requiring an institution to show that it is both nonprofit and charitable, the Legislature has presumed that there are instances when a nonprofit institution might not be considered 'charitable.'" *Wexford, supra,* 474 Mich at 204, fn 6, citing *Ladies Literary Club v Grand Rapids,* 409 Mich 748, 752 n 1; 298 NW2d 422 (1980) (noting that Michigan's tax exemption statutes are more narrowly drawn than the federal statute governing § 501(c)(3) corporations).

Similarly, some for-profit entities may serve charitable purposes. For example, Michigan law authorizes the formation of a low-profit limited liability company (also referred to as an "L3C") for certain charitable or educational purposes. An L3C may earn revenue and its equity owners may have the right to take distributions of profits. MCL 450.4102(2)(m). Under the *Wexford* decision, an L3C with a charitable purpose would clearly be disqualified from seeking an exemption under MCL 211.9(1)(a) because of its for-profit status. However, if the Court of Appeals decision is upheld, an L3C with an educational purpose could seek an exemption under MCL 211.9(1)(a)

despite the fact that it would be disqualified from receiving a real or personal property tax exemption under MCL 211.7n because of its for-profit status, and despite the fact that a similarly-situated L3C formed for charitable purposes would not be entitled the same exemption.

It is apparent from the *Wexford* decision that the application of the "nonprofit" requirement to MCL 211.9(1)(a) came from the language in MCL 211.7o. The Court determined—based on the inclusion of the word "nonprofit" in MCL 211.7o—that an exemption claimant seeking a charitable exemption under MCL 211.9(1)(a) must similarly be nonprofit. This is apparent from the Court's recitation of the "nonprofit" requirement before even engaging in an analysis of what it means to be a "charitable institution." The Court read the statutes together and interpreted them to avoid a conflict after expressly recognizing the "time-honored rules of statutory construction" and that "because tax exemptions upset the desirable balance achieved by equal taxation, they must be narrowly construed." *Id.* at 204.

The City is asking the Court to apply the same interpretation to MCL 211.9(1)(a) in light of the nonprofit requirement in MCL 211.7n, and in light of decades of case law including *American Youth Foundation, supra,* 37 Mich App at 725, and *Kalamazoo Aviation History Museum, supra,* 131 Mich App at 712, in which our Courts have recognized that MCL 211.9(1)(a) applies to *nonprofit* institutions.

It is quite revealing that the only case Petitioner could identify below involving a for-profit entity was *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920). *Webb* was decided decades before the adoption of our current Constitution (discussed above) which clearly authorizes an exemption for *nonprofit* educational organizations. Further, the school in *Webb* was a general educational institution, not a business college or specialized private school, and *Webb* was decided

over 50 years before "nonprofit" was added to MCL 211.7n. Thus, the *Webb* case is certainly not determinative of the issue presented here.

Petitioner in this case is a for-profit entity and it operated with the intent that individuals would profit monetarily from the business. If the Court of Appeals decision is affirmed, the result would be *Wexford,* on the one hand, instructing taxing authorities and taxpayers that a charitable institution claiming an exemption under MCL 211.9(1)(a) must be nonprofit and this case, on the other hand, holding that a claimant seeking an educational exemption under the same section may be operated for-profit. This would create a conflict not only between MCL 211.7n and MCL 211.9(1)(a) (because the personal property of a for-profit institution that would not qualify for an exemption under MCL 211.7n would nevertheless be exempt under MCL 211.9(1)(a)), but also within MCL 211.9(1)(a) itself as it would be read differently depending on the type of institution seeking the exemption. This result cannot be sustained. See e.g., *Telluride Ass'n v Ann Arbor,* 495 Mich 985; 844 NW2d 122 (2014) (Markman, J., dissenting) ("The application of legal standards by which the public sector defines which educational and charitable institutions qualify as 'educational' and 'charitable' institutions is a matter of considerable importance for Michigan's ***nonprofit sector***, and for the overall social environment of this state") (emphasis added). It also leaves unanswered whether a scientific institution—which is only exempt under MCL 211.7n if it is *nonprofit*, may claim an exemption under MCL 211.9(1)(a) if it is *for-profit.*

When MCL 211.9(1)(a) and 211.7n are read together (as MCL 211.7o and 211.9(1)(a) were read together in *Wexford*), it is apparent that the intent of the statutory scheme is to make educational exemptions available to nonprofit entities that meet the other requirements of an "educational institution." "Individual words and phrases, while important, should be read in the context of the entire legislative scheme." *Michigan Prop, LLC v Meridian Twp,* 491 Mich 518, 528;

817 NW2d 548 (2012). Looking at the Legislative scheme as a whole, other provisions in the GPTA support the conclusion that the Legislature intended for only nonprofit educational institutions to receive exemptions. See MCL 211.7o, which exempts real or personal property owned by a nonprofit charitable institution that is occupied by a nonprofit educational institution; see also MCL 211.7z, which exempts property occupied by a school district, community college, or other state supported educational institution, or a nonprofit educational institution, which would have been exempt from ad valorem taxation had it been occupied by its owner solely for the purposes for which it was incorporated.

Yet the Court of Appeals decision actually places a higher burden on nonprofit educational institutions seeking an exemption. By way of example, if a nonprofit educational institution was seeking an exemption for personal property located on real property that it owned, it would also have the burden of proving that it occupied the property in order to exempt "the buildings *and other property thereon*." MCL 211.7n (emphasis added). If the institution was for-profit, on the other hand, it would (under the Court of Appeals reading of MCL 211.9(1)(a)) be entitled to an exemption for its personal property under MCL 211.9(1)(a) by mere virtue of ownership of the personal property, regardless of whether the institution owned and occupied the real property on which the personal property was located, and despite the fact that it would be expressly disqualified from an exemption under MCL 211.7n due to its for-profit status. Clearly, that is not the intent of a statute intended to grant an educational exemption and, therefore, immunity from the burden of taxation, to those institutions that substantially reduce the burden on the government. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 670; 378 NW2d 737 (1985).

3. The Court of Appeals erroneously dismissed the application of MCL 211.7n to personal property by wrongfully limiting the meaning of "occupy."

In dismissing the conflict between MCL 211.7n and MCL 211.9(1)(a), the Court of Appeals stated that MCL 211.7n exempts only real estate or personal property owned and occupied by the institution and that "the tax exemption claimed in the instant matter concerns a personal property tax exemption." (App. 465a.) The Court expressed "serious doubt to whether [MCL 211.7n] would be at all applicable to the facts at hand." *Id.*

However, MCL 211.8 defines personal property as including "[a]ll goods, chattels and effects" and the Court of Appeals omitted the phrase "and other property thereon" from its recitation of MCL 211.7n, resulting in an overly narrow reading of that statute. If the Legislature intended MCL 211.7n to apply only to real estate and buildings that could be occupied, then the phrase "and other property thereon" would be unnecessary. And it is a "well-recognized rule" that courts "must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory." *People v Miller*, 498 Mich 13, 25; 869 NW2d 204 (2015).

Moreover, as discussed above, our Courts have recognized that MCL 211.7n and MCL 211.9(1)(a) both provide for personal property exemptions. And, contrary to the Court of Appeals decision—which cites no authority to support the conclusion that the property at issue cannot be "occupied"—this Court recognized in *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008), that "occupy" has several different meanings:

> —v.t. 1. to have, hold, or take as a separate space; possess, reside in or on, or claim: The orchard occupies half the farm. 2. to be a resident or tenant of; dwell in. 3. to fill up, employ, or engage: to occupy time reading. 4. to engage or employ the mind, energy, or attention of: We occupied the children with a game. 5. to take possession and control of (a place), as by military invasion.—v.i. 6. to take or hold possession. [*Id.* at 57, citing *Webster's Universal Dictionary* (1997 ed).]

The sixth definition of "occupy" set forth in *Liberty Hill* is consistent with *Black's Law Dictionary* (10th ed), which defines "occupy," in part, as "to take possession of" or "to use." It is also consistent with *The Dictionary of Real Estate Appraisal*, The Appraisal Institute (3rd ed), which defines "occupancy" as "[t]he state of being in possession," and the *Glossary for Property Appraisal and Assessment*, International Association of Assessing Officers, which defines "occupancy" as "[t]he act of taking or holding possession of property." (App. 527a-533a.)

Importantly, the *Liberty Hill* Court recognized that "[u]se of property is just one part of occupying it. The two terms are not mutually exclusive; 'use' is merely narrower than 'occupy.'" *Liberty Hill*, *supra*, 480 Mich at 61. Thus, when viewed in context, "occupy" may have a different meaning as it pertains to personal property. Because *Liberty Hill* did not involve personal property, the Court did not reach this issue. But, the dissent recognized that the language "owned and occupied"

> applies broadly to "real or personal" property, not simply residential property. Not all property that is eligible for exemption is susceptible to being resided in. For example, if a nonprofit charitable institution owned land that contained a swimming pool, it would be inapt to state that the institution occupied the swimming pool in that it resided in the pool. But it would be entirely appropriate to state that the institution occupied the swimming pool in that it operated the pool and, further, that it operated the pool in fulfillment of its charitable purpose. Thus, the term "occupied" must be construed so that it applies to the broad range of property that could be exempt under MCL 211.7o(1). [*Id.* at 70-71 (Cavanagh, J. dissenting).]

For the Court of Appeals in this case to dismiss MCL 211.7n without any analysis of the meaning of "occupy" also ignores its own earlier decision in *City of Port Huron v State Tax Comm'n*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2012 (Docket Nos. 301058, 301062), slip op at 4 (App. 535a) in which it concluded that not all definitions of "occupy" require physical "occupation." The Court of Appeals in that case said—contrary to what it found in the instant case:

> In MCL 207.5(4)(b), the phrase "owned, used, and occupied" modifies "tangible property, real and personal." Applying the literal meaning of the conjunctive to the modified phrase would lead to the conclusion that, in order to have a situs in this state, tangible real property must be owned and used and occupied, and tangible personal property must be owned and used and occupied. It might be argued, as respondent does, that this result is dubious because personal property can rarely be "occupied." But as the Court discussed in *Liberty Hill*, 480 Mich. at 57–58, ***"occupy" has multiple meanings and the appropriate one must be selected in light of the type of property involved and not all definitions require physical "occupation."*** [*Id.* (emphasis added).]

In fact, the Court of Appeals in *Mich Co-Tenancy Laboratory/Trinity Health v Pittsfield Charter Twp*, unpublished opinion per curiam of the Court of Appeals, issued November 14, 2013 (Docket No. 310376), slip op at 7 (App. 539a), looked at the predominant use of the subject personal property (laboratory equipment).

Similar to how the Court of Appeals has (in other cases) interpreted "occupy" with regard to personal property, the Tribunal has also interpreted "occupy" to mean frequent use in cases involving personal property. See e.g., *Healthlink Transp Servs, Inc v City of Taylor*, 15 MTT 129, 135-36 (Docket No. 275821), issued July 1, 2003 (App. 547a) (construing "occupied" as frequent use of the subject personal property, and finding that petitioner met the occupancy requirement because "the subject personal property was physically used to 'operate emergency and non-emergency medical and transport services'"); see also *Dominion Broadcasting, Inc v Fairfield Twp*, 11 MTT 26 (Docket No. 268756), issued March 13, 2001 (App. 560a), where the Tribunal stated:

> Occupancy was defined in *Green v Ingersoll*, 89 Mich App 228, 228; 280 NW2d 496 (1979) as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in." Black's Law Dictionary (4th ed 1968) p. 1231. The Tribunal also finds "occupant" defined in Black's Law Dictionary (4th ed 1968) p. 1230 as: "person having possessory rights, who can control what goes on premises." *United States v Fox CCANY*, 60 F2d 685, 688.

Given the above, the Court of Appeals' disregard of MCL 211.7n was unfounded. The Court of Appeals erred in failing to recognize the conflict between MCL 211.9(1)(a) and MCL 211.7n, and in failing to construe MCL 211.9(1)(a) in a manner consistent with our Constitution, decades of case law including *Wexford*, and in failing to give the appropriate deference to the Tribunal's decision.

CONCLUSION AND RELIEF REQUESTED

For all of the reasons set forth above, Respondent-Appellant City of Kentwood respectfully requests that this Court reverse the Court of Appeals decision and affirm the Tribunal's grant of summary disposition in favor of the City under MCR 2.116(I)(2).

Respectfully submitted,
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Dated: February 17, 2016

By /s/ Crystal L. Morgan

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